HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 252 2004 (M/S)

Yogesh Kumar

Versus.

Uttaranchal Shiksha & PriKsha Parishad

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 17.8.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.

WRIT PETITION NO. 252 OF 2004 (M/S)

Yogesh Kumar. …Petitioner.

Versus

Skiksha Pariksha, Ramnagar. … Respondents.

Sri Sanjeev Singh Advocate for the petitioner,
Sri Deepak Sirohi, Advocate assisted by Seema Sirohi,
Advocate for the respondents.

HON"BLE RAJESH TANDON J.

By the present writ petition a writ of mandamus directing the respondents to produce the records of answer book of Chemistry II Paper of petitioner before this Hon'ble Court. The petitioner has further prayed for a writ directing the respondents to value the answer book of Chemistry II paper of petitioner and in case the petitioner obtained the passing marks in chemistry II paper then he will be declared pass in Intermediate Examination 2003.

Brief facts of the case are that the petitioner appeared in Intermediate Exam 2003, with subjects General Hindi (105), English(121),Mathematics (137), physics (150), Chemistry (151) from the school VMIC Sec.I BHEL Ranipur Haridwar and his exam centre was Jwalapur Inter College Jwalapur, Hardwar. Respondent allotted Admit Card to the Petitioner of Rool No. was 0000948 for the exam. The petitioner has submitted that after completion of the examination he came to know about his result through Internet and found that he has been declared failed on account of absent in

Chemistry Second Paper. The petitioner has communicated the aforesaid result to the Principal of his college and the Principal of the college has made an application dated 02.07.2003 to the respondent about presence of the petitioner in all the papers of intermediate examination.

On 10.7.2003 marksheet was issued to the petitioner in which petitioner was declared failed on account of absent in Chemistry Second paper. When in point of fact the petitioner was present on 29.04.2003, the date on which examination of Chemistry II paper was held.

The petitioner has submitted that he was present in Chemistry II Paper in the said list the name of the petitioner is at serial NO.23 and his signature was also available in the said list but he has wrongly being shown as absent in the marksheet. Later on a marksheet was issued to the petitioner in which he was shown as present in Chemistry Ii paper but obtained 0 mark. In view of the aforesaid circumstances the petitioner has prayed for revaluation as well as writ of mandamus for verification of the answer book.

A counter affidavit has been field. In para 4 of counter affidavit the respondent has stated that in view of the representation to the Secretary of the Board on 02.07.2003 stating therein that he appeared in Chemistry IInd paper but has wrongly been shown as absent in the marksheet, the record was checked and it was found that the petitioner was not absent but

secured 00 (zero) mark in Chemistry IInd paper. The information to that effect was sent to the petitioner. The respondent has also stated that on scrutiny no change was found.

In para 6 of Counter affidavit, it has been stated that as per relevant schedule the answer books, marks slip and correspondence relating thereto are retained by the Board till the scrutiny is over. In the case of the petitioner and other students answer books were weeded out after the scrutiny on 10.02.2004.

In the supplementary counter affidavit in papr 4, it has been stated that a photo copy of answer was kept in confidential section for its record, the original copy of the answer book was sent to the scrutiny section.

Photo copy of the answer book of Chemistry IInd paper of the petitioner was produced before this court during the hearing. The petitioner was also present., He has raised certain objections stating that it has not been produced along with the affidavit and some numerical were not available in the photocopy. Although the photo copy was not disputed by the petitioner except the aforesaid propositions which has been pointed out by the counsel for the petitioner during the course of the hearing.

I have also appointed a panel of three Advocates for examining the answer book. The Panel of three Advocate has reported that the petitioner can not get 00 (zero) marks.

However, the expert was also called who has reported that after the scrutiny one mark was obtained by the petitioner. The counsel for the petitioner has referred the judgment of Saurabh Kumar Gupta Vs. State of U.P. & Others [2001] 1 UPLBEC 31], the same is quoted below:

"*Learned Counsel appearing for the Petitioner and the learned Standing Counsel Shri A.K. Malhotra jointly perused the copy of the Petitioner relating to mathematics II paper of High School and stated that student Petitioner deserved to be awarded 18 marks in Mathematics II paper and it such marks are awarded student/Petitioner deserved to be declared passed.*

Consistently this Court is noticing that the marks awarded in the Answer Books of the students clearly show negligence functioning of the Examiners. It is regrettable that the Board takes no action against such Examiners and this tendency is increasing year by year creating menace.

In view of the above, I direct the U.P. High School and Intermediate Board, Allahabad to award 18 marks to the Petitioner in Mathematics II paper of High School Examination and issue a fresh mark sheet indicting correct marks and also, accordingly, declare result of the petitioner.

Writ Petition is allowed with costs quantified at Rs.10,000 (Rupees Ten thousand) to be awarded to the Petitioner by the Board, If Board decides to take action

against the Examiner, this amount shall be recovered from the Examiner concerned."

A Division Bench decision reported in 1985 U.P. LBEC page 734 Kumari Renu Sharma Vs. Madhyamic Shiksha Parishad & another has held that after calculation of the marks the petitioner was declared as passed. The same is quoted below:

"5. It thus appears that according to the decision of the Examination Committee of the Board, in cases where answer book of candidate relating to some paper is not available and maximum marks obtainable in that paper are 50, has to be awarded in that paper, average f the marks obtained by him in other papers and the same is to be increased by 3 grace marks if such average works out in between 1-17. In case such average works out in between 18-34, he has to be awarded 2 grace marks and 1 grace mark is to be awarded in cases where it works out in between 35 and 49 marks.

6. In the instant case, Ist paper of Indian History carried 50 maximum marks. The question that arises for consideration is with regard to the manner in which the average marks obtained by a candidate for being awarded in respect of missing paper are to be worked out. There is nothing in the said resolution of the Examination Committee to show that while working out such average marks, only the marks obtained in the concerned subject is to be taken into account. We find absolutely no justification for so limiting the working of the average. It is not disputed that in most subjects,

only two papers are set for examining the candidates. Accordingly, in case where the answer book of a candidate in one paper of the main examination is missing, no question of working out of the average on the basis of the remaining paper in that subject alone can possibly arise. In our opinion, the resolution of the examination Committee clearly implies that in such cases, the average of the marks obtained by the candidate has to be worked out on the basis of the available marks obtained by the candidate has to be worked out on the basis of available marks obtained by him in all the papers in which he has appeared in connection with the said examination. The petitioner has secured 158 marks out of 500 marks in all the papers in which she appeared in the main examination of the year 1983. She secured 29 out of 100 marks in the two papers of History in which she appeared in the first supplementary examination. Like wise, she secured 13 out of 50 marks in the second paper of the Indian History in the second supplementary examination. The available marks obtained by the petitioner in various papers, thus work out to 227 marks out of 650 marks. The average marks secured by her in each paper of 50 marks thus works out to little more than 17 marks. Increasing the said marks by 3 grace marks, as per Examination committee's resolution the petitioner becomes entitled for being awarded 20 out of 50 marks in the missing History I paper of the second supplementary examination. The total marks secured by her in the two papers thus

come to 20 + 13 =33 out of 100 marks. Having secured 33% marks in her second supplementary examination, petitioner is entitled to declaration of here Intermediate Examination result on that basis."

In the light of the aforesaid facts, it is evident that the petitioner is entitled for the average marks which the respondent may consider for awarding the same. The circumstances are quoted below:

(i) Initially the petitioner was shown as absent, (ii) On the representation of the Principal as well as the petitioner the marks were shown as 00 (zero), (iii) The Committee of the Advocates have reported that the petitioner is not entitled for 00 (zero) marks, (iv) The expert has found one additional mark.

The marksheet of the petitioner shows that in Hindi he has secured 53 marks and in English he has secured 56 marks, in Mathematics 45 marks, in Physics 52 marks & only Chemistry II paper he has shown as absent & in Chemistry I paper he has secured 15 marks and in practical 22 marks total 37 marks. Out of the aforesaid Chemistry paper 30 marks for the practical and 35, 35 each for chemistry Ist and IInd paper, In Cghemistry Ist paper he has already passed but in Chemistry IInd paper some marks were missing due to the fact that he has been shown absent.

In view of the above, the respondents are directed to consider the awarding of average marks to the petitioner in accordance with the rules.

The counsel for the respondent has prayed that the photocopy of the answer book be returned to him. The office shall return the answer book after retaining a photo copy of the same. The certified copy of the two report may also be directed to be given to the respondent when he applies for the same.

The result committee after examining the case in the light of the observations made above, may take decision and issue the mark sheet within one month from the date of filing the certified copy of this judgment.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

Dated: August 17, 2004 **(Hon'ble Rajesh Tandon J.)**

S.S. Negi.